In the High Court of Judicature at Madras

Dated : 14.11.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice N.SATHISH KUMAR

Tax Case Appeal Nos.601 of 2007 & 299 to 302 of 2009

Thiru S.Dhanapal (Smaller HUF) (specified), Arni	...Appellant in TCA. Nos.607/2007 & 301/2009
Thiru S.Dhanapal (Bigger HUF) (specified), Arni	...Appellant in TCA.299/2009
Thiru S.Dhanapal (individual), Arni	...Appellant in TCA. Nos.300 & 302/ 2009

Vs

The Assistant Commissioner of Income Tax, City Circle VI (Inv.), Chennai-34	...Respondent in all the TCAs

APPEALS under Section 260A of the Income Tax Act, 1961 against the common order dated 30.12.2005 in ITA Nos.838 to 842/Mds/ 1993 on the file of the Income Tax Appellate Tribunal Chennai 'B' Bench respectively for the assessment years 1987-88, 1987-88, 1987-88, 1988-89 and 1988-89.

For Appellants : Mr.M.P.Senthilkumar

For Respondent : Mr.M.Swaminathan & Ms.S.Premalatha

COMMON JUDGMENT

(Judgment was delivered by T.S.SIVAGNANAM,J)

We have heard the learned counsel on either side.

2. These appeals filed by the assessee under Section 260A of the Income Tax Act, 1961 (for short, the Act) are directed against the common order dated 30.12.2005 passed by the Income Tax Appellate Tribunal (for brevity, the Tribunal) in ITA.Nos.838 to 842/Mds/1993 respectively for the assessment years 1987-88, 1987-88, 1987-88, 1988-89 and 1988-89.

3. The above tax case appeals are admitted on 16.6.2009 on the following redrafted substantial questions of law :

"*TCA.Nos.601 of 2007 & 301 of 2009 :*

1. Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in law in not considering and following the decision of the co-ordinate Bench of the Tribunal in the case of the appellant's son, while deciding the issue of allowing expenditure u/s.37 of Income Tax Act, 1961, in arriving at the taxable income from bus operation for similar bus routes?" and

2. Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in law in holding that the share income from M/s. Dhanapal Maligai was assessable in the hands of S. Dhanapal (Individual), when the investment in M/s.

Dhanapal Maligai itself was made by S.Dhanapal (Smaller HUF)?

and

<u>TCA.No.299 of 2009 :</u>

1. Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in law in not considering and following the decision of the Co-ordinate Bench of the Tribunal in the case of the appellant's son, while deciding the issue of allowing expenditure u/s.37 of Income Tax Act, 1961, in arriving at the taxable income from bus operation for similar bus routes?

2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in not holding that the credits in capital account, offered as business income should be telescoped for the purpose of arriving net income and whereby confirmed double addition under head 'business'? And

3. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in confirming the addition under the head business of sale of paddy and rice without telescoping the credits in capital account, offered as business income for the purpose of arriving net income whereby confirmed double addition under head 'business'? And

<u>*TCA.Nos.300 and 302 of 2009 :*</u>

1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in not considering and following the decision of the co-ordinate Bench of the Tribunal in the case of the appellant's son, while deciding the issue of allowing expenditure u/s.37 of Income Tax Act, 1961, in arriving at the taxable income from bus operation for similar bus routes?

2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in not holding that the credits in capital account, offered as business income should be telescoped for the purpose of arriving net income and whereby confirmed double addition under head 'business'? And

3. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the share income from transport business relating to S.Dhanapal (Bigger HUF) and share of loss from M/s.Dhanapal Maligai relating to S.Dhanapal (Smaller HUF) were assessable in the hands of S. Dhanapal (Individual), when the respective investments were made by respective HUFs?"

4. The first contention advanced by the learned counsel for the assessees is that the Tribunal failed to take note of its earlier decision in ITA. Nos.1483/Mds/1993 and 1255 to 1261/Mds/1993 dated -NIL-.9.2003, which was a case of the son of the assessee herein both as an HUF and also in his individual capacity. For easy reference, the questions, which arise for consideration in this batch of appeals, are furnished in a tabulated form, which is as follows :

S No	*Issues*	*S.Dhanapal Naicker (Individual)*		*S.Dhanapal (bigger HUF) specified*	*S.Dhanapal (smaller HUF) specified*	
	TCA.No.	*300/2009*	*302/2009*	*299/2009*	*601/2007*	*301/2009*
	ITA No.	*840/93*	*842/93*	*839/93*	*838/93*	*841/93*
	A.Y.	*1987-88*	*1988-89*	*1987-88*	*1987-88*	*1988-89*
1	*Estimate of bus income*	*Q1*	*Q1*	*Q1*	*Q1*	*Q1*
2	*Credits in capital A/c. Offered as business income to be telescoped – bus income*	*Q2*	*Q2*	*Q2*	-	-
3	*Share income/loss from transport business (B.HUF) & Dhanapal Maligai (S.HUF)*	*Q3*	*Q3*	-	*Q2 challenging addition in individual hand*	*Q2 challenging addition in individual hand*
4	*Addition under head business – sale of paddy & rice*	-	-	*Q3*	-	-

5. The first substantial question of law, which arises for consideration in all the appeals, is with regard to the estimate of bus income. The Tribunal, in the impugned common order, has not taken note of the decision rendered by it earlier in the case of the assessee's son. So far as the bus income is concerned, the Tribunal observed that in their considered opinion, the estimation of assessee's daily receipt from plying of bus for 173 days at Rs.1,350/- per day, as worked out by the Assessing Officer and as confirmed

by the Commissioner of Income Tax (Appeals), was reasonable and not excessive and accordingly, rejected the contention raised by the assessee.

6. The assessee's specific case was that the expenditure had to be first computed, that such exercise was done in the assessee's son's case and that such amount, which was computed by the Tribunal in the assessee's son's case, should have been adopted.

7. We have perused the order passed by the Tribunal in ITA.No.1483/ Mds/93 etc. cases pertaining to the assessee's son both as an HUF and as an individual. The Tribunal has taken note of the age of the bus as well as the reasons given by the Assessing Officer for the assessment year 1984-85 and fixed the expenditure at Rs.14,100/- per month for all the three assessment years, which were under consideration in the assessee's son's case. In our considered view, the reasons assigned by the Tribunal in ITA.No.1483/Mds/ 93 etc. cases are just and fair and that there is a clear method followed by the Tribunal for computing the expenses per bus per month. Thus, the Tribunal ought to have adopted the same method in the assessee's case also and there is no reason given by the Tribunal to take a different view. ***Accordingly, we answer substantial question of law No.1 in all the appeals in favour of the assessee and against the Revenue. We direct the Assessing Officer to first compute the expenditure by adopting the computation done in the assessee's son's case***.

8. The second question, which falls for consideration, is as to whether the Tribunal was right in law in not holding that the credits in capital account offered as business income should be telescoped for the purpose of arriving

at the net income and whereby confirmed the double addition under the head 'business'. In fact, this question relates to telescoping of bus income, which, according to the assessee, is required to be done to avoid double addition. A similar issue arises in TCA.No.299 of 2009 wherein substantial question of law No.3 relates to telescoping with regard to the income from sale of paddy and rice. Thus, substantial question of law No.2 in TCA.Nos.299, 300 and 302 of 2009 and substantial question of law No.3 in TCA.No.299 of 2009 are similar except the difference being one relates to income from bus and the other relates to income from sale of paddy and rice.

9. We need not labour much to decide the same, as the issue with regard to bus income and as to whether telescoping of the credits should be done or not were considered by the Tribunal in the assessee's son's case in ITA.No.1483/Mds/93 etc. cases, in which, in paragraph 8, the Tribunal held as follows :

> *"The other common issue that arises in these appeals is with regard to the addition made on account of credits in the capital account. The plea of the assessee is for telescoping of the credits to the extent of income added in the business account. This submission of the assessee is reasonable one and we restrict the income to the extent it could not be telescoped with the addition made on account of income from business."*

10. The Tribunal found that the plea of the assessee for telescoping of the credits to the extent of income added in the business account is reasonable and accordingly, restricted the income to the extent it could not

be telescoped with the addition made on account of income from business. We find that the Revenue has not been able to point out before us as to why a similar relief should not be granted in the assessee's case also.

11. Therefore, ***we answer this question namely substantial question of law No.2 in TCA.Nos.299, 300 and 302 of 2009 and substantial question of law No.3 in TCA.No.299 of 2009 in favour of the assessee. We direct the Assessing Officer to restrict the income to the extent it could not be telescoped with the addition made on account of income from business.***

12. This leaves us with two more issues namely with regard to the share income/loss from transport business in the bigger HUF and from the business of provisions stores in the name and style of Dhanapal Maligai (smaller HUF). The assessee offered the income in the HUF. However, the Assessing Officer held that it should be assessed in the hands of the individual.

13. We have examined the correctness of the findings rendered by the Assessing Officer on this issue and we find that the Assessing Officer has actually recorded a finding that the assessee became a partner of Dhanapal Maligai, that the capital was Rs.30,000/- as on 30.6.1986 and Rs.3.5 lakhs as on 30.6.1987 and that the investment in the firm has not been made out of the HUF funds and there had been no detriment of HUF funds. He further held that the share from Dhanapal Maligai would arise for consideration only in the hands of the individual.

14. With regard to the share income from the transport business, which was brought by the assessee in the bigger HUF, the Assessing Officer held that the income derived from the bus said to be belonging to HUF is assessable in the hands of the individual and completed the assessment. The factual findings rendered by the Assessing Officer as confirmed by the CIT (A) as well as the Tribunal do not call for interference, as we find that there is no perversity in the same. ***Hence, substantial question of law No.3 in TCA.Nos.300 and 302 of 2009 and substantial question of law No.2 in TCA.Nos.601 of 2007 and 301 of 2009 are decided against the assessee and in favour of the Revenue.***

15. In the result, the above tax case appeals are partly allowed to the extent indicated above. No costs.

14.11.2018

RS

Internet : Yes

To

1.The Income Tax Appellate Tribunal, Chennai 'B' Bench.
2.The Assistant Commissioner of Income Tax, City Circle VI (Inv.), Ch-34

T.S.SIVAGNANAM,J

AND

N.SATHISH KUMAR,J

RS

TCA.Nos.601 of 2007 & 299 to 302 of 2009

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